

VOLUME 1. GENERAL CONCEPTS, DIRECTION, GUIDANCE, AND DEFINITIONS

CHAPTER 6. WHISTLEBLOWER PROTECTION PROGRAM (AIR CARRIER)

SECTION 2. INSPECTOR RESPONSIBILITIES AND PROCEDURES.

531. DEFINITIONS.

A. Air Carrier. Title 49 U.S.C. Section 40102(a)(2) defines “air carrier” as “a citizen of the United States, undertaking by any means, directly or indirectly, to provide air transportation.”

NOTE: For the employee to be protected under the Whistleblower Protection Program (WBPP), a company does not have to hold an “air carrier” certificate to meet the definition of an air carrier. Employees that alleged their company is operating as an “air carrier” without an air carrier certificate and in violation of the rules that require a certificate and operations specifications, may be protected, if it is determined during the investigation that the company meets the definition of an “air carrier.” The rules for air carriers apply to those who are conducting operations that would require an air carrier certificate (see Title 14 of the Code of Federal Regulations (14 CFR) part 119, section 119.5 (L)).

B. Air Transportation. Foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

C. Air Carrier Employee. An individual presently or formerly working for an air carrier or contractor or subcontractor of an air carrier, an individual applying to work for an air carrier or contractor or subcontractor of an air carrier, or an individual whose employment could be affected by an air carrier or contractor or subcontractor of an air carrier.

(1) 49 U.S.C. § 42121 provides protection to **employees** against retaliation by air carriers, their contractors and their subcontractors, because they provided information to the employer or the federal government relating to air carrier safety violations, or filed, testified, or assisted in a proceeding against the employer relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (FAA) or any other law

relating to the safety of air carriers, or because they are about to take any of these actions.

(2) 14 CFR part 121, section 121.1 and part 135, section 135.1 both prescribe rules governing “each person employed or used by a certificate holder...” It is important to note that if a person is used by an air carrier certificate holder or an air carrier that does not hold a certificate, that person may still be considered an “air carrier employee” for the purposes of Whistleblower protection.

D. Foreign Air Carriers. 49 U.S.C. § 40102(a)(21) separately defines “foreign air carrier” as a “person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.” Given that Congress specifically defines that an air carrier must be a citizen of the United States, § 42121 does not encompass foreign air carriers, except to the extent that they may act as a contractor or subcontractor to a US air carrier.

533. PRINCIPAL AND GEOGRAPHIC INSPECTOR(S) RESPONSIBILITIES.

- Inform covered employees of the WBPP.
- Investigate WBPP safety complaints from employees of air carriers, contractors, and subcontractors in accordance with 49 U.S.C. § 42121 and national WBPP policy.
- Keep employees names confidential.
- Coordinate and share information concerning WBPP complaints with the Occupational Safety and Health Administration (OSHA) investigators in accordance with National Policy and agency-agreed procedures.
- Report through office manager and region to the Director of Flight Standards, AFS-1, Attn: Whistleblower Protection Program, AFS-200W with the preliminary results of their whistleblower complaint investigation for coordination with the Department of Labor (DOL).
- Complete tracking in the Program Tracking and Reporting Subsystem (PTRS).

535. INSPECTOR PROCEDURES.

A. An employee of an air carrier, contractor, or subcontractor may contact an FAA aviation safety inspector (ASI) with information regarding a violation or an alleged violation of an FAA order, regulation, or standard, or any other provision of Federal law relating to air carrier safety. The employee may also request whistleblower protection by DOL. In order for ASIs to adequately advise employees of their rights, inspectors should immediately advise them of the WBPP and for a personal remedy that they should contact DOL/OSHA as soon as possible (not later than 90 days after the discrimination event).

B. A whistleblower complaint investigation should be opened and begun as soon as a complaint is received. Some records to substantiate the complaint may not be available if the ASI waits for a tracking number prior to beginning the investigation. Complaints may be received by FAA HQ from DOL, reported directly to the FAA, or received by the FAA from any other federal source. Complaints that FAA HQ receives from DOL will be assigned a tracking number and then forwarded to the appropriate regional office for investigation. Regional offices will forward the complaint to the appropriate Field office to initiate the investigation. FAA personnel that receive potential whistleblower complaints directly from the employee or other federal source should begin the safety investigation and notify their regional whistleblower coordinator, to initiate coordination procedures with AFS-200W and receive a tracking number.

C. *Conducting an Investigation.* ASIs should use the following general steps when conducting a whistleblower investigation.

(1) **Contact the complainant**, by most expeditious means possible (phone, e-mail, etc.).

(2) Ask if they have any additional supporting evidence or can tell you where to look.

(3) Ask if they have any witnesses or other employees that can corroborate the alleged violation(s).

(4) Ask if any other employees are having the same or similar problems.

(5) Site inspection. Interview company personnel involved and/or other persons that may have knowledge (**Do not release complainants name; the FAA/OSHA MOU requires that FAA will keep complainants name confidential**).

NOTE: ASIs should not reveal that they are investigating a whistleblower complaint. ASIs only investigate the safety issues.

(6) Collect evidence, interview company personnel, other employees, witnesses, and make copies of all relevant

information (keep accurate records, names, dates, times, etc.).

(7) Review company manuals and/or records for alleged violations.

(8) Take appropriate enforcement and/or corrective action or close out with no action.

D. *Report Preparation.*

(1) Analyze the results of the investigation. Do not address allegations of discrimination. Only address the alleged violations of FAA orders, standards, regulations, or any other federal law relating to air carrier safety.

(2) Write report. List each allegation related to air carrier safety (TSA will investigate security issues). For each allegation:

(a) Summarize the investigation process (e.g., who did you interview, what records/manuals did you review, etc.);

(b) Explain what enforcement action, if any, was taken.

(3) Upon request, share information of your initial findings with OSHA investigators.

(4) Complete PTRS entries: For all activities associated with the WBPP, Operations and Cabin Safety Inspectors should enter the PTRS code 1737, maintenance inspectors should enter the PTRS code 3740, and Avionics inspectors should enter the PTRS code 5740. All whistleblower complaints will be assigned a tracking number to be entered in the National Use Field. In the Misc. Data field, enter WHISTLE. When the complaint is closed out, enter the results of the investigation in the comments section and use the assigned tracking number in the National Use Field on all associated PTRS actions (e.g., Enforcement Investigation Reports (EIR)).

NOTE: All national whistleblower tracking numbers begin with WB then the last two numbers of the fiscal year (FY), then the individual sequence number of complaints received in that FY. NO SPACES between characters, (Example: WB0301 = whistleblower, FY03, first one received.)

(5) Prepare a memo from the office manager to the regional division manager summarizing preliminary results (if EIR is being processed, summarize the violations and recommended sanctions; if administrative action was taken, attach a copy of the administrative letter). Preliminary results should indicate details of the investigation with dates, times, and names of persons including witness interviewed and whether the investigation findings substantiated a violation of an FAA order, standard, or regulation or any other federal law related to air carrier safety. Also include a

statement that indicates what type of corrective or enforcement action is planned.

(6) If no action was taken explain why the employees' allegations were not substantiated.

E. Regional Office Review.

(1) Regional coordinators will review preliminary results for completeness and action taken.

(2) Regional division managers will review the case and any recommended action.

(a) If the manager does not concur with the results, the manager should return it for further investigation;

(b) If the manager concurs, then the manager should send their concurrence of the investigation to AFS-1, Attention: Whistleblower Protection Program, AFS-200W, within 45 days from the date of the initial assignment memo from AFS-1.

NOTE: To facilitate the processing of FOIA requests, when legal enforcement action was initiated, Regional Whistleblower Coordinators will notify AFS-200W when each enforcement action is closed.

537. SPECIAL ENFORCEMENT CONSIDERATION.

FAA Order 2150.3, Compliance and Enforcement Program (as amended), chapter 13, paragraph 1302, contains FAA policy and procedures for providing immunity from enforcement action, in some cases, to persons who provide information about violations. In relation to enforcement matters, information regarding regulatory violations occasionally is offered to an FAA ASI or attorney along with a request that, in exchange for the information, the person making the offer be granted "immunity from prosecution" for his or her participation in the violations. The phrase "immunity from prosecution" ordinarily refers only to criminal matters. The individual usually is seeking an assurance that limited or no FAA civil enforcement action will be taken against him for admitted violations in exchange for information concerning violations by his employer or other members of the aviation community. The term "special enforcement consideration" (SEC) is used here instead of the term "immunity from FAA civil enforcement action" and covers mitigation of sanction as well as a determination that no enforcement action is warranted. In cases where the employee may have committed a violation under duress, the fact that FAA may not have received the safety information if the complainant had not reported it under the WBPP is a mitigating factor that must be given major consideration in the recommended sanction. Further guidance will be developed specific to whistleblowers.

539. CIVIL PENALTY. The FAA may impose a civil penalty after the Secretary of Labor's Order of a finding of a

violation of 49 U.S.C. 42121 becomes final. This civil penalty is in addition to any enforcement action the FAA may impose for safety violations as well as any abatement action OSHA may impose concerning a finding of discrimination. The FAA will receive a copy of the Secretary of Labor's Order when it becomes final (i.e., all appeals by either party are exhausted). The FAA may then issue the civil penalty for a violation of 49 U.S.C. § 42121 based upon the finding by DOL, in addition to any FAA safety investigation enforcement action the FAA may have previously taken (see 49 U.S.C. § 46301).

541. TIMELINESS OF COMPLAINT (I.E., OVER 90 DAYS). It is important that each complaint be thoroughly investigated. FAA still has to investigate the safety issues regardless of whether the complaint is filed in a timely manner or not. OSHA may dismiss the complaint of discrimination as untimely, but may under certain circumstances (i.e., the complainant has a valid reason for not submitting the complaint within 90 days), accept the complaint. Even if the complaint is deemed untimely by OSHA, the complainant is still afforded appeal rights by OSHA.

543. CONFIDENTIALITY AND PRIVACY ACT.

Whistleblower complaints contain confidential information intended only for the use of agency personnel on a "need-to-know" basis. Unauthorized disclosure of confidential information may constitute a violation of the Privacy Act, Title 5 of the United States Code (5 U.S.C.) § 552a and applicable agency rules of conduct. Any questions concerning the legitimate disclosure of some or all information contained in whistleblower complaints should be directed to the responsible Regional Counsel's Office. FAA Regional counsel may wish to contact AGC-300 for Legal Enforcement National Policy questions.

545. FOIA REQUESTS.

A. All requests received under the Freedom of Information Act (FOIA) for information concerning whistleblower complaint investigations must be sent to FAA HEADQUARTERS, ARC-40, FOIA Staff, FAA, 800 Independence Ave., S.W., Washington, D.C. 20591

B. If your office has records on the subject whistleblower investigation, photocopy all records and forward them to your Regional Whistleblower Coordinator. The Regional Whistleblower Coordinator will copy any records the regional office may have and then send the entire package to the National Whistleblower Protection Program Office (AFS-200W).

547. RECORD RETENTION. All records associated with Whistleblower investigations must be kept for 3 years after the investigation is closed.

549. SHARING OF INFORMATION WITH OSHA.

Upon request, an agent of OSHA may review the investigative file and request copies of any supporting documents. The documents must be requested in writing (an electronic message is adequate and will speed the process), with a statement that they will not be disseminated outside OSHA without the authorization of this agency.

551. INTERNATIONAL OPERATIONS. Employees of U.S. air carriers or contractors to U.S. air carriers are covered in all international operations worldwide.

552 - 574. RESERVED.

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